

08.01.2025
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MAT 1956 of 2024
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IA No.: CAN No. 1 of 2024
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IA No.: CAN No. 2 of 2024

Sanjay Prasad Gupta & Another
– *Versus* –
Union of India & Others

Mr. Mir Anowar,
Ms. Debanjali Payra
... for the Appellants.

Mr. Ajit Kumar Mishra,
Mr. Pradip Kumar Kundu,
Mr. Abhishek Dey,
Mr. Kushagra Maskara
... for the UoI/Respondents.

Affidavit-of-service, as filed, be kept on record.

The present appeal has been preferred challenging an order dated 2nd August, 2024, passed by the learned single Judge in the writ petition, being WPA 1215 of 2018.

As we have invited Mr. Anowar, learned advocate appearing for the appellants to advance his arguments on merits of the matter, the delay in filing the present appeal is condoned and the application for condonation of delay, being IA No.: CAN 1 of 2024 is disposed of.

Mr. Anowar submits that as the appellants were not given a second attempt to appear in the written examination pertaining to appointment to the post of Constable under the Railway Protection Force (in short, RPF) in terms of the Railway Protection Force Rules, 1987 (hereinafter referred to as the RPF Rules), they

approached this Court earlier by a writ petition, being WP 7646 (W) of 2005, which was disposed of by an order dated 18th August, 2015 observing *inter alia* that:

‘.... the respondent Authorities might consider the claim of the petitioners for taking second attempt in passing those subjects provided the respondent Authorities find that the petitioners made the criteria specified by the Director General or the Chief security Commissioner concerned, in the matter of allowing second attempt to the petitioners under the said substituted Rule. The respondent Authorities will consider the case of the petitioners as expeditiously as possible.’

Pursuant to such direction, the respondent no.3 passed an order on 23rd September, 2015 rejecting the appellants’ claim. Aggrieved thereby, the appellants preferred the writ petition, being WPA 1215 of 2018 and the order passed in the same has been impugned in the present appeal.

Mr. Anowar further submits that persons similarly situated with the appellants were granted a second attempt to participate in the written examination but the respondents have chosen to apply a different yardstick in the case of the appellants. Such argument, as advanced, was glossed over by the learned single Judge and no finding was returned on the same.

He argues that the respondents could not have rejected the appellants’ claim on a purported plea that the amended Rules cannot be made applicable in respect of

the appellants when upon considering the said Rules in operation, the Hon'ble Court by order dated 18th August, 2015 passed in the earlier writ petition directed the respondents to consider the appellants' claim and moreso when the said order dated 18th August, 2015 had attained finality.

He further argues that the learned single Judge failed to appreciate that upon substitution of the old Rule 65.3, special provision was made for second attempt to qualify in the examination and such substitution was erroneously construed to be effective prospectively.

Mr. Mishra, learned advocate appearing for the respondents, however, denies the contention of the appellants and submits that the appellants appeared for the final examination held in the year 2004 but failed to qualify. At that juncture there was no provision for grant of a second attempt to the appellants to qualify. The Rules were amended through a gazette notification dated 16th August, 2013 and the amendment was not given any retrospective effect and as such, the appellants were not entitled to a second attempt to appear in the written examination.

He argues that the order passed in the earlier writ petition did not confer any right upon the appellants to appear afresh in the examination and that as such they have been rightly discharged having failed to qualify in the examination held prior to amendment of the Rules.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

The argument of the appellants that they ought to have been granted a second attempt to appear in the examination was rightly discounted by the learned single Judge since at that juncture when the appellants appeared in the examination, no such rule was in operation conferring any right to avail a second attempt. The Rules were amended and notified in the year 2013 and were not given any retrospective effect. The argument of applicability of the amended Rules retrospectively, as argued on behalf of the appellants, was not legally sustainable.

Records further reveal that the first writ petition was preferred in the year 2005 which was ultimately disposed of by an order ten years thereafter in the year 2015. On the strength of the said order no right was created in favour of the appellants to avail the benefits of the amended Rules.

The learned single Judge, upon dealing with all the factual issues arrived at specific findings and we do not find any error, least to say any patent error of law in the order impugned. No legally protected right of the appellants, which can be judicially enforced, has been infringed and the order impugned does not suffer from any jurisdictional error or any substantial failure of justice warranting interference of this Court.

Accordingly, the appeal and the connected stay application are dismissed.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)